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C O N F I D E N T I A L SECTION 01 OF 03 SHANGHAI 000035

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SUBJECT: SHANGHAI STRIVING FOR TRANSPARENCY THROUGH OPENING
INFORMATION

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CLASSIFIED BY: Veomayoury Baccam, Acting Political/Economic
Section Chief, U.S. Consulate, Shanghai, Department of State.

REASON: 1.4 (b), (d)

¶1. (SBU) Summary: Two years into the implementation of Shanghai's Open Government Information Act (OGIA)--one of the few in China--local officials claimed that the act had had broadened residents' access to government information and improved overall government transparency. They said that a forthcoming National Open Government Information Act (OGIA) would be based on Shanghai's successful experience. Despite official claims of openness, anecdotal evidence suggests that enforcement of the OGIA was less than perfect, with at least one high-profile case where a journalist was reportedly intimidated into withdrawing his request. End Summary.

OGIA at Two Years

¶2. (SBU) Shanghai began implementing the OGIA in May 2004. The act provided citizens and organizations the right to request information from government agencies. While information related to national security is excluded, the act established the presumption of disclosure, making secrecy the exception and established the "right to know," which does not appear in China's constitution or any national law to date. Poloffs met with local officials during the initial phases of the acts implementation in early 2005. At the time, officials were effusive in their praise for the act and claimed that it was a "breakthrough point" in the city's effort to establish "law-based government." (see reftel).

¶3. (SBU) On October 10, 2006, Poloff and Rule of Law Coordinator (ROLC) paid a visit to the Shanghai Legislative Affairs Office (LAO) to get an update on the local government's implementation of the act and its impact on the local government. (Note: The LAO had been key in drafting the OGIA. End note.) According to LAO Institute of Administrative Law Director Liu Ping, every government organization had a dedicated

unit and personnel devoted to making that organization's information public. Liu explained that the LAO and the Shanghai Municipal Supervision Commission were in charge of supervising the governmental agencies on implementation of the OGIA. Every year, the LAO ranked the agencies on its OGI performance and published the ranking internally within the Shanghai government.

Liu added that the rankings would be opened to the public in the future to allow all Shanghai residents the opportunity to supervise governmental agencies' OGI work. Anyone who lived in Shanghai--including foreigners--was allowed to request information to be made public.

Skyrocketing Information Requests

14. (SBU) Liu said that in the past, any request for releasing government information needed to be approved on a case-by-case basis. Since the OGIA went into effect in 2004, however, information--with the exception of administrative information, or information about a specific person or business--was presumed open unless there was a reason to withhold it. This had led to a more proactive government that had made public 185,317 pieces of information during the first eight months of 2006--up from 50,281 pieces the year before. Most of the information was available digitally on the municipal web site.

15. (SBU) The act had also led to a sharp increase in the number of requests for information to be made public. In 2004, the government received 8,799 such requests. Of those, 6,913 were approved in full, 479 were approved in part, and 1330 requests were refused--about 800 were refused because the information requested did not exist. In 2005, the government received 12,465 requests to open information, approved 8771 requests in full and 365 in part, and rejected 2,654. During the first eight months of 2006, the number of requests doubled from the previous year to 25,849 requests with 19,068 approved in full and 1,017 approved in part; 4,695 requests were rejected.

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16. (SBU) According to Liu, rejection of a request did not necessarily spell the end of a person's options. For example, he said that in 2004: 38 applicants requested reconsideration by a higher department within the same agency that had initially refused them; six applicants filed lawsuits in court to dispute the initial rejection; and 10 applicants took their cases to a higher-level government bureaucracy for resolution. In 2006, the numbers through August jumped to 189 requests for internal reconsideration, 65 litigation cases, and 25 appeals to a higher authority.

17. (SBU) Liu noted that there was also an increase in the number of individuals searching municipal websites for information. This indicated that the public was increasingly concerned about information openness, according to Liu. During the first year of the OGIA's implementation, the municipal government's open information website had received 146,197,212 hits. Since then the number had shot up and there were 351,570,910 hits through August 2006. During the same period, public inquiries--aside from requests to open information--jumped from 124,129 to 784,144.

Still Some Bugs to Work Out

18. (C) Liu noted that despite the success of the implementation of the OGIA to date, there was still room for improvement. He said that the lack of a clear definition on what constituted "government information" often led local government agencies to question whether some of the requested information should be disclosed. Part of the problem surrounded the often blurred line between party information and government information. Party information needed to be opened as well, but that to do so would require a separate set of laws, according to Liu.

Shanghai was also considering the question of charging a nominal fee for information requests to keep people from abusing the system. (Note: Liu did not say if he thought there were currently people who were abusing the system. End note.)

Following Shanghai's Path: A National OGIA?

¶9. (SBU) Liu told Congenoffs that although the idea for an OGIA had first been implemented in Guangzhou, Shanghai had been the first provincial-level government to adopt one. Since Shanghai enacted its OGIA in 2004, eight other provincial-level governments had adopted similar legislation. Shanghai, however, remained the example for others to emulate.

¶10. (C) Indeed, the central government was currently considering a draft national OGI law, which, Liu noted with obvious pride, was based on the Shanghai model. Moreover, Beijing's drafting team had held several workshops in Shanghai to learn from Shanghai's experience. Liu understood that the national OGI law would follow the format and principles of the Shanghai OGIA.

Credit Belongs to Shanghai Party Secretary Han Zheng

¶11. (C) Liu was also effusive in his praise for acting Party Secretary and Mayor Han Zheng. According to Liu, Han was

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responsible for providing the initial thrust for the OGIA. In 2004, Han told the Planning Bureau that it needed to make more of its information public and the idea spread from there. When Han was elected Mayor in 2003, his motto was "a government of service, a government of responsibility, and a government of law." Liu said that the fact that the pension scandal that brought down former Party Secretary Chen Liangyu came to light proved that there was no problem with openness in Shanghai. With Han now overseeing the Party, Liu was confident that he would push for even greater transparency and openness.

And the Lawsuits? Nothing to See Here

¶12. (SBU) On May 18, 2006, one of the first real tests of the OGIA happened when Ma Cheng, a Chinese journalist with the Shanghai-based newspaper Jiefang Daily, sued the Municipal Urban

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Planning Bureau after the bureau refused on several occasions to disclose government information related to a story he was investigating on urban planning. This case represented the first time a journalist had sued the government in China for denial of the access to information and garnered wide interest from all over China. A Shanghai local district court accepted the case only to have Ma withdraw it five days later.

¶13. (C) In an article posted on the Xinhua website in June 2006, Ma refused to explain why he withdrew his suit, saying only that he "hoped in the future to have the chance to discuss the issue with reporters." However in an explanatory letter to the Chinese Journalist Association cited in the article, Ma hinted that he had come under government pressure to withdraw the case. Ma wrote that "some government bureaus have used illegal and non-routine methods to restrict" his investigative reporting. Zhao said that the LAO was aware of the case. Liu claimed that Ma had withdrawn the case because, in the end, the government gave him the information he had requested, not because the government had employed coercive tactics. Ma has not made any further comments on the case. (Comment: Congenoffs remain highly skeptical that Ma ended his suit because the government capitulated to his demands. End comment.)

¶14. (SBU) Liu said that in most cases where the plaintiff dropped the suit, they did so because the agency in question had reversed its initial decision. Such had been the case with the very first lawsuit filed under the OGIA by Dong Ming (see Reftel). In her case, the court upheld the agency's refusal because it found that Dong was looking for the information from the wrong agency. However, the government agency that Dong had sued, then helped her figure out which agency had the information she was seeking. With the former defendant agency's help, Dong was reportedly able to get all of the information she had been seeking.

Comment

¶15. (C) While there is a need for classifying government information in any country, the default in the Chinese system has been to label most all information a "state secret," leaving most people in the dark on even the simplest of issues. Shanghai's OGIA could be an important step towards creating a more transparent bureaucracy. However, given the limitations of the system--a broad prohibition on "administrative information," a poor definition of "government information," and the often ambiguous distinction between party and government information--there is still significant room for improvement. End comment.
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